

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

ROBERT ANTHONY CELIA,

Plaintiff,

vs.

MIKE KANE, RYAN MOORE,
ZDRAZIL,

Defendants.

No. C13-3018-MWB

ORDER

The matter before the court is an order dated September 24, 2013 (Doc. No. 8). Pursuant to such order, the court directed the plaintiff to submit an initial partial filing fee. On October 8, 2013, the plaintiff complied with the court's directive.

Read liberally, the plaintiff's complaint appears to assert a failure to protect claim. In light of the facts alleged by the plaintiff and the law, the court is doubtful that the plaintiff states a claim upon which relief can be granted. This is so because it appears that the plaintiff did not fully exhaust administrative remedies prior to commencing this action, *see* 42 U.S.C. § 1997e(a), and the facts suggest that the plaintiff told the defendants that he was generally having issues with others and had not told them that he had been threatened by a particular individual, that he elected to return to general population and that a significant amount of time passed between when he complained to the defendants and when he was assaulted, *see Prater v. Dahm*, 89 F.3d 538, 541-42 (8th Cir. 1996) (finding that a prisoner failed to show that a prison official "actually knew of the risk" to the prisoner when the prisoner told the official that he received threats from his roommate because, in part, after reporting the threats, the prisoner and his roommate told the official that there would be no trouble and the two "were incarcerated together for a substantial

period of time without incident”). Nevertheless, the court is unable to determine as a matter of law whether the plaintiff’s complaint is frivolous or fails to state a claim within the meaning of 28 U.S.C. § 1915 or 28 U.S.C. § 1915A. Consequently, the court is of the opinion that the matter is best addressed after receipt of an answer and/or any dispositive motion deemed appropriate. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Money v. Moore*, 877 F.2d 9, 10 (8th Cir. 1989). The clerk’s office shall serve the complaint on the defendants and mail a copy of the complaint to the Iowa Attorney General without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Iowa Attorney General shall notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants shall file an answer or other dispositive motion by no later than January 13, 2014.

IT IS THEREFORE ORDERED:

The clerk’s office is directed to serve the complaint on the defendants and mail a copy of the complaint to the Iowa Attorney General without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Iowa Attorney General is directed to notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants are directed to file an answer or other dispositive motion by no later than January 13, 2014.

IT IS SO ORDERED.

DATED this 10th day of December, 2013.



LEONARD T. STRAND
UNITED STATES MAGISTRATE JUDGE

**NOTICE OF LAWSUIT
and REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

ROBERT ANTHONY CELIA,

Plaintiff,

vs.

MIKE KANE, RYAN MOORE, ZDRAZIL,

Defendants.

No. C13-3018-MWB

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint and a copy of the corresponding order from this court are attached. This complaint has been filed in the United States District Court for the Northern District of Iowa.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, you have an obligation to cooperate in saving unnecessary costs of service of summons and complaint. Please sign the enclosed document where appropriate acknowledging receipt of the complaint and notice of this pending lawsuit and waiving formal service of summons. After signing the enclosed document, please return it to the United States Clerk's Office in the envelope provided within thirty (30) days of this date: 12/10/13.

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the plaintiff, this 12/10/13, 2013.

/s/ djs, Deputy Clerk
Signature (Clerk's Office Official)
Northern District of Iowa

**ACKNOWLEDGMENT OF RECEIPT OF
NOTICE OF LAWSUIT,
and WAIVER OF SERVICE OF SUMMONS**

(**Return **this** document within thirty days after 12/10/13, to the United States Clerk's Office in the envelope provided.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
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ROBERT ANTHONY CELIA,

Plaintiff,

vs.

MIKE KANE, RYAN MOORE, ZDRAZIL,

Defendants.

No. C13-3018-MWB

I acknowledge receipt of the complaint and notice of the lawsuit in which I (or the entity on whose behalf I am addressed) have been named a defendant. I have received and/or read the complaint accompanying this document.

I agree to save the cost of service of a summons and an additional copy of the complaint by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. I hereby waive service of summons.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the service of summons. I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule 12 of the Federal Rules of Civil Procedure is not served within 60 days after _____, (the date Notice, Waiver and corresponding documents were sent).

Date _____

Signature _____

Printed name _____

As _____ of _____

(Title) (Entity)

Date _____

Signature _____

Printed name _____

As _____ of _____

(Title) (Entity)

Address Form

Case Number: C13-3018-MWB

Date: December 10, 2013

To: Clerk of Court

RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: All Defendants

Fort Dodge Correctional Facility